

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
SEPTEMBER 22, 2017

Gambling Control Board Conference Room  
Department of Public Safety  
45 Commerce Drive, Augusta, Maine

Commission Members Present: William Varney, Chair, William McFarland, Gary Reed, and Michael Graham

Commission Members Absent: Alexander Willette

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Zachary Matzkin and Mari Wells Eager

**1. Call the Meeting to Order and Introductions:** William Varney, Chair

**2. Review and Approval of Minutes**

Commissioner McFarland made a motion to approve the minutes of July 21, 2017 as written. Commissioner Graham seconded. Vote 4-0.

**Review and Approval of Decision and Orders**

Commissioner McFarland made a motion to approve the decision and order for Steven Vafiades' 2017 License Denial. Commissioner Graham seconded. Vote 4-0.

Commissioner McFarland made a motion to approve the decision and order for Eric Davis complaint numbers 2017 MSHRC 4 & 5. Commissioner Graham seconded. Vote 4-0.

Commissioner Graham made a motion to approve the decision and order for Ronald Cushing complaint 2017 MSHRC 6. Commissioner Reed seconded. Vote 4-0.

Commissioner Graham made a motion to approve the decision and order V-1 for Davric Maine as race dates not make up dates. Commissioner McFarland seconded. Vote 4-0.

AAG, Guay drafted an order to continue Nicholas Diflorio's case to the November meeting. He also stated that Gerald Laughlin's case was continued to the August meeting but we had no meeting so he drafted an order to continue the case to the October meeting. AAG, Guay stated that he issued a continuance for Jocelyn Desfosses case because he requested a split sample.

**3. Adjudicatory Hearings:**

- a. RE: Philip Sowers, Jr., Complaint Number 2017 MSHRC 7.** Mr. Sowers is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Sowers is the trainer of record for the horse "Boots N Bourbon". A blood sample obtained from Boots N Bourbon following the Fifth Race at Scarborough Downs on June 15, 2017 disclosed an elevated level of testosterone. Philip Sowers, Jr. was present and represented by William Childs. Mr. Childs stated that they can stipulate to much of it. AAG, Guay asked if it's merely the sentencing. Mr. Childs stated yes. AAG, Guay stated that they can consolidate the 3 cases. He opened the hearing on the matter of Philip Sowers, Jr, complaint numbers 2017 MSHRC 7, 8, and 13. He qualified the Commissioners. Commissioner McFarland recused himself from the three cases. Mr. Childs stated that they are stipulating to the 3 positive tests for testosterone relative to the horse Boots N Bourbon on June 15, June 22, and June 29, 2017. The horse tested 90 pg/ml on June 15<sup>th</sup>, 44 pg/ml on June 22<sup>nd</sup>, and 42 pg/ml on June 29<sup>th</sup>. They agreed it is a prohibited substance under the schedule. There was no objection by either party at this point. (No exhibits were admitted). AAG, Guay gave Mr. Sowers his oath. Mr. Childs asked questions of Mr. Sowers. Mr. Sowers stated that he bought the horse from Buffalo and entered the horse in Scarborough before he left Buffalo. Mr. Sowers stated that he didn't know the horse had been administered the medication. Mr. Childs stated that Mr.

Sowers is asking the Commission to take into consideration by way of mitigation that he not be suspended any days because he didn't administer the medication and he didn't know the horse had been administered this medication. Mr. Jennings stated that there was an omission on the last case they had heard at the June meeting. At that point, the new Chapter 17 had been in effect for one month and the new version of Chapter 17 for Class B penalty calls for the horse to be disqualified for 30 days. His standard policy has been to recommend the minimum penalty. Commissioner Varney asked Mr. Jennings what his recommendation is. Mr. Jennings stated that he would treat this as one violation for the purposes of penalties, all purses returned, and recognize that a Class B penalty also requires a 30-day suspension of the horse, and 15 days' suspension for the trainer. AAG, Guay asked if it's the state's position that because of this substance that the Eric Davis decision and order be applied. Mr. Jennings stated that he is strictly speaking to anabolic steroids and newly acquired horses. Mr. Childs asked if Mr. Davis' horse got suspended for 30 days. Mr. Jennings stated no because he missed that. Mr. Childs stated that Mr. Sowers' horse should have been treated like Mr. Davis' horse. Commissioner Varney stated that he is not sure that he wants the Commission to be tied down to follow Mr. Davis' case for the remaining year. AAG, Guay stated that you could have a holding. The Davis decision was in June. These violations occurred in June; so, if you don't want to have an open-ended amnesty going into the months further, he thinks you could say that the precedence of Davis would apply. The Commission asked the department and warned the industry at that point in time that there were things that trainers could do. The Commission put them on notice that from this point forward. There were questions for Dr. Matzkin about sending the blood test in for newly acquired horses, and the department would cooperate with trainers to do that. Commissioner Varney stated that Mr. Sowers should follow the Eric Davis precedence. Commissioner Reed stated that he is a little uneasy and read Chapter 11, Section 3.F. "The trainer is responsible for, and is the absolute ensurer of the condition of, the horse that the trainer enters regardless of the acts of other parties." Commissioner Graham tends to agree with Commissioner Reed except that these guys that are buying horses out of New York are supposedly in the past should have been tested out there but they haven't, so we put people on notice. AAG, Guay asked for any other questions. Mr. Childs asked what the total of purses would be. Mr. Jennings stated \$3,750. AAG, Guay closed the hearing for deliberations. Commissioner Graham made a motion that Mr. Sowers be fined 15-day suspension with days suspended, fine of \$500, and return of purses for all three races within 30 days, the horse is disqualified for 30 days and 30 days suspended. AAG, Guay asked if these three cases would count as one violation for counting purposes. Commissioner Graham stated that was his intension. Commissioner Varney seconded. Vote 3-0. Commissioner McFarland recused himself.

- b. **RE: Philip Sowers, Jr., Complaint Number 2017 MSHRC 8.** Mr. Sowers is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Sowers is the trainer of record for the horse "Boots N Bourbon". A blood sample obtained from Boots N Bourbon following the Seventh Race at Scarborough Downs on June 22, 2017 disclosed an elevated level of testosterone. See complaint number 2017 MSHRC 7.
- c. **RE: Allie Hiscock, Complaint Number 2017 MSHRC 9.** Mr. Hiscock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hiscock is the trainer of record for the horse "Carls Glory". A blood sample obtained from Carls Glory following the Sixth Race at Scarborough Downs on June 25, 2017 disclosed an elevated level of phenylbutazone. Allie Hiscock was present and represented himself. AAG, Guay gave Mr. Hiscock his oath. He qualified the Commissioners. There was no objection by either party. Mr. Jennings

presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Report and Exhibit 8, ARCI Guidelines. AAG, Guay admitted the documents. Mr. Hiscock stipulated to being the trainer of record of the horse Carls Glory, and the horse raced in the sixth race at Scarborough Downs on June 25, 2017. He did not stipulate to the administration of phenylbutazone. Mr. Jennings stated that the horse had an elevated level and Mr. Hiscock did not request a split sample. He called Don Heisler. AAG, Guay gave Mr. Heisler his oath. Mr. Heisler stated that Mr. Hiscock gave bute paste to the horse. Mr. Heisler stated that there is a lot of room for allowance for a picogram. He also stated that Mr. Hiscock has done everything he can to abide by the rules. AAG, Guay closed the hearing on the evidence for deliberations. Commissioner McFarland made a motion to a violation. Commissioner Graham seconded. Vote 4-0. Mr. Jennings recommends under Class C as a first offense which is a written warning. AAG, Guay closed the hearing for deliberation. Commissioner McFarland made a motion to accept the recommendation of the executive director as a written warning. Commissioner Graham seconded. Vote 4-0.

- d. **RE: Philip Sowers, Jr., Complaint Number 2017 MSHRC 13.** Mr. Sowers is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Sowers is the trainer of record for the horse “Boots N Bourbon”. A blood sample obtained from Boots N Bourbon following the Eighth Race at Scarborough Downs on June 29, 2017 disclosed an elevated level of testosterone. See complaint number 2017 MSHRC 7.
- e. **RE: Allie Hiscock, Complaint Number 2017 MSHRC 14.** Mr. Hiscock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hiscock is the trainer of record for the horse “Carls Glory”. A blood sample obtained from Carls Glory following the Fifth Race at Scarborough Downs on July 6, 2017 disclosed an elevated level of methylprednisolone. Allie Hiscock was present and representing himself. AAG, Guay asked the Commissioners if anything has changed from the first hearing of being fair and bias. The Commissioners stated no. AAG, Guay stated that they would proceed and there would have to be a requisite finding of two violations and one penalty hearing. Mr. Jennings presented the following exhibits for complaint number 3027 MSHRC 14 & 15. Exhibit 1, Notice of Hearing; Exhibit 2, License Application; Exhibit 3, Race Program; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheets; Exhibit 7, LGC Lab Report and Exhibit 8, ARCI Guidelines. AAG, Guay admitted all exhibits for both cases. He asked Mr. Hiscock if he admitted to being the trainer of record of the horse Carls Glory on July 6 and July 9, 2017, and the horse raced at Scarborough on July 6 and July 9, 2017. Mr. Hiscock stated yes. AAG, Guay asked Mr. Hiscock if he admits to these facts, you are admitting to the violation. Do you admit on July 6 that the horse Carls Glory had an elevated level of methylprednisolone? Mr. Hiscock stated no. Mr. Jennings stated that the documents will show the prohibited substance was present. Mr. Hiscock did not request a split sample. Mr. Hiscock called Don Heisler. Mr. Heisler stated that there was lack of information. He never received any rules. He thinks Mr. Hiscock got the methylprednisolone in his horse in May. His horse started coming up high in June for methylprednisolone. Dr. Matzkin was warning Mr. Hiscock. Mr. Heisler checked his records and there was no injection of methylprednisolone given to Mr. Hiscock’s horse after May. He had given methylprednisolone intramuscularly in May like he has for years as a throat therapy. Mr. Heisler stated that Dr. Matzkin wasn’t aware of the rule either because if you give the drug intramuscularly it can show up for months. He also stated that Mr. Hiscock was basically entrapped. Mr. Heisler stated that Mr. Hiscock was in perfect compliance when he received

the drug, then the rules came out. AAG, Guay stated that Mr. Heisler's testimony kind of hits both issues but we still do need to do the violations first. He stated that it's been proffered that there's a legal theory that the horse was administered a drug prior to the date of the rule change, and thus any subsequent violation after the rule change would be entrapment. He asked Mr. Jennings for a response on that. Mr. Jennings stated that the rule changed was on May 7, 2017. There was a phasing period that was offered for these particular cortisol steroids a variety of different steroids that can be used because it was new. There was a phasing period offered that ended on June 29, 2017. The state veterinarian had been talking to people because the sampling was going on prior to that. They wanted to be able to catch on to potential issues and alert the trainers prior to the implementation date of June 29, 2017. Mr. Jennings stated that there was an intent to work with the regulated community and a sampling period that went on before any enforcement was going to take place; and that the purpose of that sampling period was to work with trainers and advise them of potential issues so that they could be aware and make the adjustments. AAG, Guay asked the Commissioners if they had any questions. Commissioner Varney asked Mr. Heisler if he administered the drug after he talked to Dr. Matzkin. Mr. Heisler stated no. AAG, Guay closed the hearing for deliberations. Commissioner Graham stated that he thinks where he was warned and still put his horse in. He doesn't have much sympathy. Commissioner Varney asked what has to be proven for entrapment. AAG, Guay stated that you are not allowed to declare conduct illegal going backwards, so you can't say you can change the level lower going backwards so he would suggest that theory would apply if the test result came in prior to the rule change. You can't say that the rule takes effect on July 1<sup>st</sup> but you have tests that were taken in March and then apply the lower standard to the March test. You can't do that. The lowest standard would apply to the test that were from July 1<sup>st</sup> for it, so that you could be found guilty for things you didn't realize were going to be a violation. In this case, the violation attaches on the date that the horse was put into the race which was subsequent to the date of the rule being enacted. He doesn't think if he was in front of a judge, that he would see that as a violation because the individual could have detected that that substance was there at that level with the new rule and prevented the horse from racing. The violation is not at the time that it's injected but rather at the time the horse was put in the race. That is sort of the point and time that you look at, and that point in time in this case was July 6 and July 9 which was subsequent to the rule being adopted. Commissioner McFarland stated that if the drug was administered in the muscle it could retain in the horse longer. Commissioner Graham made a motion to a violation in both cases. Commissioner McFarland seconded. Vote 4-0. AAG, Guay stated that they will continue to the penalty phase. Mr. Jennings called Zachary Matzkin. AAG, Guay gave Dr. Matzkin his oath. Mr. Jennings asked questions of Dr. Matzkin. Dr. Matzkin stated that the phasing period ended on June 29<sup>th</sup> when they starting using the threshold. There were a number of test taken. They tested Carls Glory on June 8<sup>th</sup> with a high level of 1890. He was not aware that the methylprednisolone was given intramuscularly. Mr. Jennings stated that he would like to submit Exhibit 9 which is a table of sample results for Carls Glory in both cases 14 and 15. AAG, Guay admitted the exhibit. Mr. Jennings asked Dr. Matzkin if he had anything else he would like to add about these sample results. Dr. Matzkin stated that the whole reason he went through the trouble to put these results together for everyone who had something come up before the race was to try to avoid this. He stated that if anyone had mentioned to him that it was an intramuscularly methylprednisolone injection he would strongly recommend not to race their horse until they got test results back. Mr. Heisler asked Dr. Matzkin if that increase with methylprednisolone have occurred after they had discussions or before. Dr. Matzkin stated before. They talked about it on June 29<sup>th</sup>. AAG, Guay asked if the Commissioners had any questions. Commissioner Graham asked Dr.

Matzkin if he understands that they had a discussion before the horse raced that maybe he should be withdrawn that he was taking a risk. Dr. Matzkin stated that it was approximately a week before these tests were taken. It was the day the threshold was going to go into effect. The horse did race but he wasn't tested. It was the following week these positive tests were drawn. Mr. Hiscock asked Mr. Heisler to testify. Mr. Heisler stated that he did not realize these days were recorded. He wished he knew the dates in June he got the regulations from Dr. Matzkin but he doesn't have that. Once it was determined and they understood it was 21 days that they had to stop methylprednisolone he knew he wouldn't have given it. He stated that he knew when to stop methylprednisolone within the 21 days because they kept counting the days. It was very unlikely that Mr. Hiscock would have allowed Mr. Heisler to give it. AAG, Guay asked if there were any other questions. He asked Mr. Heisler if the method of administration to this horse was such that it would have lingered in the horse longer. It was intramuscularly. Is that correct? Mr. Heisler stated that he is a veterinarian but he isn't an expert on how long the drug would last. AAG, Guay asked Dr. Matzkin if it would have made a difference on how it was administered. Dr. Matzkin stated that when they had talked he only had one test result, so he couldn't tell. If he was told it was intramuscular he would have even more strongly not recommend to race the horse. On that day, what he knew than, yes. AAG, Guay asked if there were any other questions for either of these people. Mr. Jennings stated that he recommends under Chapter 17, Section 5 as a Class C penalty as a \$1,000 fine, 15-day suspension, and loss of purse. For a third violation, he recommends a \$2,500 fine, 30-day suspension, loss of purse and the horse is placed on the steward's list for 45 days. AAG, Guay closed the hearing for deliberations. Commissioner Reed offered an opinion. He stated that we have heard a lot of discussion about how this substance is administered will dramatically affect its retention time. We have not heard any discussion that said if you do it this way, it will triple the level which happened between June 22 and June 25. That is an unbelievable measurement based on the testimony we heard that said we didn't give them any extra. He fines that not credible. Commissioner Varney asked for any discussion or motion. Commissioner McFarland made a motion that they following the recommendation of the executive director which is a minimum penalty for a second offense of \$1,000, and a 15-day suspension, and loss of purse. For a third offense, a minimum penalty of \$2,500, and a 30-day suspension, and loss of purse, and the horse placed on the steward's list for 45 days; and the purse be returned by December 1, 2017. Commissioner Graham seconded. Vote 4-0.

- f. **RE: Allie Hiscock, Complaint Number 2017 MSHRC 15.** Mr. Hiscock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hiscock is the trainer of record for the horse "Carls Glory". A blood sample obtained from Carls Glory following the Ninth Race at Scarborough Downs on July 9, 2017 disclosed an elevated level of methylprednisolone. See complaint number 2017 MSHRC 14.
- g. **RE: Gary Wright, Complaint Number 2017 MSHRC 17.** Mr. Wright is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Wright is the trainer of record for the horse "Iloveroses". A blood sample obtained from Iloveroses following a qualifying race at Bangor Raceway on July 12, 2017 disclosed an elevated level of methylprednisolone. Gary Wright was present and represented himself. AAG, Guay qualified the Commissioners. There was no objection by both parties. Mr. Jennings presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, License application; Exhibit 3, USTA Print out; Exhibit 4, Notice of Positive Test; Exhibit 5, Sample Tag; Exhibit 6, Sample Shipment Sheet; Exhibit 7, LGC Lab Report, and Exhibit 8, ARCI Guidelines. AAG, Guay admitted the exhibits. He asked Mr. Wright if he admits to being the trainer of record for the horse Iloveroses and that

the horse raced at Bangor on July 12, 2017. Mr. Wright did not admit to the violation. Mr. Wright presented Exhibit 1 as a report from Dr. Downey. Mr. Jennings stated that the documents prove the violation. Mr. Wright did not request a split sample. AAG, Guay asked if Mr. Jennings objected to the exhibit by the licensee. Mr. Jennings stated no. AAG, Guay admitted the exhibit. Mr. Wright explained the exhibit. He stated that the form shows the amount of injection the doctor used per joint on the mare. His veterinarian Dr. Downey stated to him that the amount of level of the drug used in the joint for his horse should be fine. Once Mr. Wright received the notice of positive test, he called his vet and he said that the horse could have moved when he injected the mare. AAG, Guay asked the Commissioners if they had questions for Mr. Wright. Commissioner Graham asked if the horse has raced since, and has it been tested. Mr. Wright stated yes and it was tested in Windsor. He called Mr. Greenleaf to check to see if the horse was clean. Mr. Greenleaf stated the horse was clean and raced twice. AAG, Guay stated that there was a question asked of Mr. Greenleaf and AAG, Guay asked him if his testimony was truthful. Mr. Greenleaf stated yes. AAG, Guay closed the hearing for deliberations for a violation. Commissioner Graham stated that there was a violation. Commissioner McFarland seconded. Vote 4-0. Mr. Jennings stated that he would like to direct them to Chapter 11, Section 1.2.E. He stated that methylprednisolone is a Class C penalty and this is his first offense so he recommends a \$500 fine. Mr. Wright stated that it was an honest mistake on his behalf. If Dr. Downey would have told him not to put the mare in to qualify he would have waited. AAG, Guay asked if there were any more questions. He closed the hearing for deliberations. Commissioner Varney stated that he would entertain a smaller fine. Commissioner McFarland stated that they do have flexibility as a Commission. He finds it concerning that so many times when we discuss these matters that the vet is the one that shows up as providing information that is not sound or at least confusing causing trainers to do things that they pay for. The other individuals are totally off the hook. He is opened to a lesser fine. Commissioner Graham stated that he tends to agree but at the same time he thinks we need to give him some type of fine. Commissioner Varney make a motion to fine Mr. Wright a \$500 fine with \$400 suspended. Commissioner Reed seconded. Vote 4-0.

- h. RE: Walter Case, Jr., Complaint Number 2017 MSHRC 32.** Mr. Case is appealing the Department's preliminary denial of his 2017 driver's license application. The Department issued a preliminary denial based on the Pennsylvania State Harness Racing Commission's refusal to license Mr. Case. Walter Case, Jr. was present and represented by Evan Fisher, Esq. Mari Wells Eager represented the Department. AAG, Guay had a prehearing conference with Mr. Fisher and Ms. Wells to discuss some issues before the hearing. AAG, Guay opened the hearing in the matter of Walter Case, Jr. complaint number 2017 MSHRC 32. He qualified the Commissioners. Ms. Wells presented the following exhibits. Exhibit 1, Notice of Hearing; Exhibit 2, Mr. Fisher Letter; Exhibit 3, Denial Letter; Exhibit 4, License Application; and Exhibit 6, Pennsylvania Decision 10-13-2013 (First & last page). AAG, Guay admitted the exhibits. Mr. Fisher had no further exhibits. AAG, Guay stated that the bases for denying Mr. Case's license is Chapter 17, Section 21 and Title 8 MRS, Chapter 11, Section 283. Ms. Wells stated that the Commission must deny Mr. Case's license. Title 8 MRS, Chapter 11, Section 283 says, "The department shall obtain current listings from other jurisdictions of persons in harness racing occupations regulated by the commission who have been refused a license or who have had their license revoked or suspended. The commission shall refuse to license or shall suspend the license of any person whose license is currently refused, revoked or suspended in another jurisdiction." The statute has more authority than the rule. Mr. Case's license is currently refused so at this time the Commission must refuse to license him. Both parties stipulated to Mr. Case's

license is currently refused in Pennsylvania. Ms. Wells stated that exhibit 6, currently speaks for itself. Mr. Case is currently refused a license until October 9, 2018. Mr. Fisher stated that if you hear the states argument it is as if there is no point of any of us being here. Ms. Wells wants you to believe you have no decision making in this appeal but that is not true. If you look at the notice of hearing, paragraph 4 says, "Pursuant to Commission Rule Chapter 17, Section 21, "All penalties imposed by any Racing Commission in any racing jurisdiction shall be recognized and enforced by this Commission unless application is made for a hearing before this Commission wherein the applicant must show cause as to why such penalty should not be enforced against him/her in this state." That is why they are here to show good cause. In Chapter 17, Section 8, Unfitness To Participate reads, "Any person whose character and general fitness are such that continued participation in harness racing by that person is inconsistent with the public interest and the best interests of racing generally, shall be suspended for a period not to exceed one year." In the State of Maine, the maximum penalty for being unfit to participate in harness racing is one year. To uphold this Pennsylvania refusal is five times the maximum penalty on a Maine racer. Mr. Fisher called Dana Delisle. AAG, Guay gave Mr. Delisle his oath. Mr. Fisher asked questions of Mr. Delisle. Mr. Delisle stated that Mr. Case should be licensed. He poses no threat to horses, drivers or other bettors in harness racing. He also stated that the Pennsylvania denial refused him for something that happened off the racetrack. Ms. Wells asked Mr. Delisle if he read the order. Mr. Delisle stated no. Mr. Fisher called Mr. Case. AAG, Guay gave Mr. Case his oath. Mr. Fisher asked questions of Mr. Case. Mr. Case stated he applied for an application in Maine because he loves the sport and he just wants to come home. Ms. Wells asked Mr. Case if he has applied for a driver's license in Ohio. Mr. Case stated no. Commissioner McFarland asked Mr. Case if he had any pending violations or outstanding fines that he has not paid in these other jurisdictions. Mr. Case stated no. Commissioner Graham asked Mr. Case if he is still on probation in Ohio. Mr. Case stated no. That was over in 2011. Commissioner Varney asked Mr. Case if he plans on moving to Maine if he gets a license. Mr. Case stated yes. There was a brief meeting with counsel at this point. AAG, Guay asked for redirect. Mr. Fisher asked Mr. Case how he has spent the last seven years. Ms. Wells objected to the question because it is beyond the scope of the cross. Mr. Fisher stated that it is a follow up as to why he hasn't applied in other jurisdictions. Mr. Case stated that he has spent the last several years training babies. Ms. Wells asked Mr. Case what his understanding of the Pennsylvania denial was for. Mr. Case stated that it was for general unfit character. Ms. Wells asked him if he has an understanding of what the unfitness is. Mr. Case stated no he does not. AAG, Guay asked Mr. Case if he is familiar to some degree with the Pennsylvania denial. Mr. Case stated yes. Ms. Wells moved for the admission of exhibit 6. Mr. Fisher objects to the admission of that exhibit. AAG, Guay allowed for counsel to ask about the exhibit to a certain section. Mr. Fisher objects to that line of questioning. AAG, Guay stated that he is going to allow the state to ask questions based upon this order but he is not putting the order into evidence. Mr. Case will have the order. Ms. Wells directed Mr. Case to page 11. She asked him if that was some of the reasons for denial of his Pennsylvania license. Mr. Case stated yes. AAG, Guay stated that the question to Mr. Case based on reading this and refreshing his recollection, is your testimony still that the denial was not related to any type of interaction with the harness racing commission. Mr. Case stated that he really didn't know. AAG, Guay stated that he is going to shut this type of questioning done. He is going to allow Mr. Case for an impeachment witness if he wants to call one. He is not going to allow exhibit 6 in. Mr. Fisher called David Ingraham. AAG, Guay gave Mr. Ingraham his oath. Mr. Fisher asked questions of Mr. Ingraham. Mr. Ingraham stated that Mr. Case should have a license to race in the state of Maine. Mr. Fisher called Robert Sumner. AAG, Guay gave Mr. Sumner his oath. Mr. Fisher asked questions

of Mr. Sumner. Mr. Sumner stated that Mr. Case deserves to have his license. Mr. Fisher called Michael Sweeney. AAG, Guay gave Mr. Sweeney his oath. Mr. Fisher asked questions of Mr. Sweeney. Mr. Sweeney stated that Mr. Case is the best of what he has seen on the track. His name still rings legendary. AAG, Guay asked Ms. Wells if she had any witnesses. Ms. Wells called Miles Greenleaf. AAG, Guay gave Mr. Greenleaf his oath. Ms. Wells asked questions of Mr. Greenleaf. Mr. Fisher objected to the questions. AAG, Guay asked questions of Mr. Greenleaf. He asked Mr. Greenleaf if he or anyone else in the department interviewed any of the people that were relied upon for the Pennsylvania Commission to reach that conclusion that they did about his application. Mr. Greenleaf stated no they did not interview anybody. AAG, Guay asked Mr. Greenleaf that they do not have a basis as to whether or not the information that Pennsylvania relied upon is in fact true or not. Mr. Greenleaf stated that no one was interviewed from Pennsylvania. AAG, Guay stated that this is an opportunity for closing arguments. Ms. Wells stated that Title 8, Section 283 clearly states that the department shall refuse to license any person whose license is currently refused in another jurisdiction. Mr. Case's license is currently refused in the state of Pennsylvania until October 9, 2018. Therefore, the department ask that they uphold the preliminary denial of Mr. Case's license that was issued by Mr. Jennings. Mr. Fisher stated that they are here to show you this good cause as to why that Pennsylvania penalty, a refusal of a license for 5 years, should not be imposed in Maine. If for no other reason, you should consider the maximum suspension for the same type of violation here in Maine as one year. Look at that 2013 Pennsylvania decision and say we don't let Pennsylvania make our decisions for us and that good clause has been shown here today. AAG, Guay closed the hearing for deliberations. Commissioner Graham had a comment regarding exhibit 5. Mr. Fisher asked that Commissioner Graham be recused. Commissioner Graham recused himself because of exhibit 5 which was not entered as evidence. Commissioner McFarland stated they should follow the rules. Commissioner Reed had a comment. Section 283 was not written by the Pennsylvania Harness Racing Commission. There is no connection to whether the refusal was connected to racing. Another jurisdiction has denied Mr. Case a license and we are to do the same. Commissioner Varney stated that he thinks everyone deserves a second chance. He made a motion to give Mr. Case a provisional license for a year. There was no second. Motion failed. Commissioner McFarland made a motion based on the evidence presented here today that they deny the appeal of Walter Case, Jr. for a license currently in the state of Maine. Commissioner Reed seconded. Vote 2-1. Commissioner Varney opposed.

#### **4. Other business:**

##### **a. Update on Positive Test Results**

Commissioner Varney asked for an update on the positive test results. Mr. Greenleaf stated that not all of the cases have been heard to date. Some people have gone with consent agreements or split samples. Mr. Jennings stated that he has heard a lot of chatter and some people are saying that some people are getting special treatment.

##### **b. Update on Rulemaking**

Commissioner Varney asked for an update on the rulemaking. Mr. Jennings stated that almost every rule needs to be done but if you do rulemaking you need to do it very methodically and carefully. Chapter 7 is high on the list because it does not line up with Chapter 17 very well. Chapter 13 with the pari-mutuel needs to be done as well. The plan is to have a public hearing in December.



**5. Public Comment**

Don Marean addressed the Commission stating that the US Trotting Association is very concerned about the decline in the breeding across the United States. He passed out a brochure that will help the small breeders.

Aaron Hall stated that he has not met Mr. Case but it is such a travesty that you denied him his license. This would help harness racing.

Diann Perkins stated that the 2-year-old finals were held at Bangor Raceway. She also stated that the promotion for the 2-year-old finals was very good and she had some good comments regarding it. A few horsemen were very upset because they only tested two horses in a race. Generally, they test them all or test more than two. She is not sure why that happened. Ms. Perkins would like the Commission to appoint the Sire Stakes Advisory Commission at their next meeting.

Michael Sweeney stated that he would like to echo what Mr. Hall stated. This would be an opportunity for harness racing to give the greatest driver a license to come back and help this industry.

Kelly Case stated that her brother came here from Ohio for a license and he has been shot down so many times. She would like the Commission to reconsider.

**6. Schedule of Future Meetings:**

October 13, 2017

November 8 and 9, 2017

December 14, 2017

**10. Adjourn**

2:05 p.m.